

The Hon. James L. Robart

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

DAVID KUBALA,

Defendant,

JANA KUBALA,

Third-Party Claimant.

NO. CR22-57-JLR

**STIPULATION AND  
~~[PROPOSED]~~ ORDER SETTLING  
THIRD-PARTY CLAIM TO DIGITAL  
DEVICES**

NOTE ON MOTION CALENDAR:  
August 28, 2023

*per*

The United States and Third-Party Claimant Jana Kubala present the following Stipulation and proposed Order to settle her asserted interest in the following digital devices forfeited by Defendant David Kubala in this case (collectively, the "Subject Property"):

- a. A Samsung zFold 3 cell phone;
- b. A Toshiba laptop;
- c. A Toshiba external hard drive;
- d. A Samsung S5;
- e. A 649 GB blue WD hard drive;
- f. A Samsung tablet; and

1 g. A Seagate 4TB external hard drive

2 **I. RELEVANT PROCEDURAL FACTS**

3 On September 23, 2022, Defendant David Kubala pleaded guilty to Possession of  
 4 Child Pornography, in violation of Title 18, United States Code, Section 2252(a)(4)(B)  
 5 and (b)(2). *See* Dkt. No. 23. In his Plea Agreement, Defendant agreed to forfeit his  
 6 interest in any property used to commit or to facilitate his commission of the offense and  
 7 any data files consisting of or containing visual depictions within the meaning of 18  
 8 U.S.C. § 2253(a)(1), including the Subject Property. *See id.*, ¶ 14. In his Plea Agreement,  
 9 Defendant also agreed to abandon any interest he may have in non-contraband data files  
 10 contained on the Subject Property and consented to the federal administrative disposition  
 11 of those devices and data files, including their destruction. *Id.*, ¶ 15.

12 On December 2, 2022, the Court issued a Preliminary Order of Forfeiture  
 13 forfeiting Defendant's interest in the Subject Property to the United States. *See* Dkt.  
 14 No. 33. On December 13, 2022, the Court sentenced Defendant to 63 months in custody,  
 15 to be followed by ten years of supervised release. *See* Dkt. Nos. 40-41. The Preliminary  
 16 Order of Forfeiture was made as part of Defendant's sentence and incorporated into the  
 17 Judgment and Amended Judgment. *See* Dkt. Nos. 40-41.

18 As required by 21 U.S.C. § 853(n)(1) and Rule 32.2(b)(6)(C) of the Federal Rules  
 19 of Criminal Procedure, the United States published notice of the Preliminary Order of  
 20 Forfeiture and of its intent to dispose of the Subject Property in accordance with  
 21 governing law. *See* Dkt. No. 42. That notice informed any third parties claiming an  
 22 interest in the property that they were required to file a petition with the Court within 60  
 23 days of the date of the notice's first publication on December 14, 2022. *Id.*

24 As required by Fed. R. Crim. P. 32.2(b)(6)(A), the United States sent notice and a  
 25 copy of the Preliminary Order of Forfeiture to the Defendant's wife, Jana Kubala, who  
 26 appeared to be the sole potential claimant to the Subject Property based upon the  
 27

1 underlying investigative material. *See* Dkt. No. 47, ¶ 4 & Exhibit A. That notice was  
 2 delivered on or about December 31, 2022. *Id.*

3 On January 25, 2023, Jana Kubala filed a timely claim to the Subject Property (the  
 4 “Claim”). *See* Dkt. No. 43. In her Claim, Mrs. Kubala explained as follows:

5  
 6 I, Jana Kubala, am the legal wife of David Kubala. I am writing to  
 7 request that certain property seized by the government be returned to me  
 8 based on my third party interest in this property. My husband, David  
 9 Kubala, and I co-own a business together, Nimis Marine, LLC, which we  
 10 have operated since 2019. While David is the expert in our business, I am  
 11 actively involved in the daily operations of this business. My children and I  
 12 depend on this business for our income.

13  
 14 Seven of the items seized by the government in my husband’s case  
 15 are items which I co-own with him as his wife and co-owner[.] Specifically,  
 16 I assert that I have a third party interest in, and request the return of, the  
 17 [Subject Property].

18  
 19 *Id.* Mrs. Kubala further stated that the Subject Property was purchased with business  
 20 funds, acquired in the course of operating the business, and contained important business  
 21 records, including information about business clients. *Id.* Mrs. Kubala also stated that two  
 22 of the devices (the Samsung zFold3 cell phone, the Samsung S5, and the Seagate 4TB  
 23 external hard drive) contained 15-years-worth of family photos of the Kubalas’ children.  
 24 *Id.* In her Claim, Mrs. Kubala acknowledged any device that contained contraband would  
 25 be wiped clean prior to its return. *Id.*

26  
 27 Other than Mrs. Kubala, no other third-party has filed a claim to any of the Subject  
 Property, and the time for doing so has expired, *i.e.*, on February 12, 2023, for the  
 published notice. *See* 21 U.S.C. § 853(n)(2); Fed. R. Crim. P. 32.2(b)(6); Fed. R. Civ. P.,  
 Supp. R. G(5)(a)(ii).

## 28 **II. RELEASE OF NON-CONTRABAND FILES TO JANA KUBALA**

29 On February 1, 2023, AUSA Johnson and Mrs. Kubala discussed her Claim; that  
 30 conversation was memorialized in an email the following day. *See* Declaration of AUSA



1 Karyn S. Johnson in Support of Stipulation and Order Settling Third-Party Claim to  
2 Digital Devices (“Johnson Decl.”) ¶ 3 & Ex. A. During the conversation, AUSA Johnson  
3 explained that the government needed to retain the Subject Property as evidence for  
4 approximately one year and confirmed that the Subject Property would need to be wiped  
5 completely by law enforcement prior to their release to Mrs. Kubala due to the  
6 illegal/contraband images. AUSA Johnson stated that computer forensic examiners would  
7 attempt to locate family photos and business records so that they could be provided to  
8 her. *Id.* Mrs. Kubala explained that the business records would include the contact list,  
9 client information, and information/tutorials about how to do boat repairs. *Id.* When  
10 asked which of the Subject Devices were the highest priority, Mrs. Kubala stated they  
11 would be the Samsung zFold 3 cell phone, the Toshiba laptop, and the Seagate 4TB  
12 external hard drive. *Id.*

13 A thumb drive (the “Thumb Drive”), which had been provided by a Seattle Police  
14 Department (SPD) computer forensic examiner and which contained family photos,  
15 contact lists, and other business-related records from the Samsung zFold 3 cell phone, the  
16 Toshiba laptop, and the Seagate 4TB external hard drive, was mailed to Mrs. Kubala on  
17 or about May 31, 2023. *See* Johnson Decl. ¶¶ 4-5 & Exs. B & C.

18 Once Mrs. Kubala reviewed the files on the Thumb Drive, Mrs. Kubala confirmed  
19 that there were no other files or data stored in the Subject Property that she wanted  
20 copied. *See* Johnson Decl. ¶ 6 & Ex. D.

21 Accordingly, the United States and Mrs. Kubala have entered into the following  
22 Stipulation and Agreement:

23 **II. STIPULATION AND AGREEMENT**

24 1. Mrs. Kubala stipulates and agrees that she has reviewed the files and data  
25 stored in the above-referenced Thumb Drive that has been provided to her. Mrs. Kubala  
26 hereby affirms that she is not requesting copies of any additional files or data stored in  
27 the Subject Property.

1           2.     Mrs. Kubala acknowledges that the United States will not provide copies of  
2 any other files or data stored in the Subject Property to Mrs. Kubala.

3           4.     The United States hereby agrees to release the Subject Property to Mrs.  
4 Kubala following the conclusion of criminal proceedings in this case, to include any  
5 criminal appeal. The Seattle Police Department (SPD) will affect the return of the Subject  
6 Property to Mrs. Kubala following the conclusion of the criminal proceedings in this  
7 case.

8           5.     Mrs. Kubala understands and acknowledges that SPD computer forensic  
9 examiners **will completely wipe the memory of the Subject Property** prior to releasing  
10 it to Mrs. Kubala. Mrs. Kubala understands and acknowledges that it will be **impossible**  
11 to recover any data / files from the Subject Property after it has been wiped. Mrs. Kubala  
12 understands and agrees to this procedure.

13          6.     Mrs. Kubala understands and agrees that this Stipulation and Agreement  
14 fully and finally resolves her Claim to the Subject Property. Mrs. Kubala waives any right  
15 to further litigate or pursue her Claim, in this or any other proceeding, judicial or  
16 administrative.

17          7.     Upon release of the Subject Property (wiped) to Mrs. Kubala, Mrs. Kubala  
18 agrees to release and hold harmless the United States, its agents, representatives, and/or  
19 employees, as well as any involved state or local law enforcement agencies, their agents,  
20 representatives, and/or employees, from any and all claims that Mrs. Kubala may possess,  
21 or that could arise, based on the seizure, detention, wiping, and release of the Subject  
22 Property.

23          8.     The United States and Mrs. Kubala agree they will each bear their own  
24 costs and attorneys' fees associated with this matter.

25          9.     The United States and Mrs. Kubala agree that the terms of this Stipulation  
26 are subject to review and approval by the Court, as provided in the proposed Order  
27

1 below. If the Court enters the proposed Order, a violation of any term or condition of this  
2 Stipulation shall be construed to be a violation of that Order.

3  
4 DATED this 28th day of August, 2023.

5  
6 Respectfully submitted,

7 TESSA M. GORMAN

8 Acting United States Attorney

9 DATED: August 28, 2023

10 /s/ Karyn S. Johnson

11 KARYN S. JOHNSON

12 Assistant United States Attorney

13 United States Attorney's Office

14 700 Stewart Street, Suite 5220

15 Seattle, WA 98101

16 Phone: 206-553-2462

17 Fax: 206-553-6934

18 Karyn.S.Johnson@usdoj.gov

19 DATED: August 28, 2023

20 s/Jana Kubala

21 JANA KUBALA\*

22 Third-Party Claimant

23 Seattle, Washington

24 \*Signed by AUSA Johnson on behalf of

25 Jana Kubala per email authorization on

26 August 25, 2023

~~**PROPOSED**~~ ORDER

The Court has reviewed the above Stipulation and Agreement between the United States and Third-Party Claimant Jana Kubala, settling the interest Mrs. Kubala has asserted in the Subject Property, Dkt. No. 43, that was forfeited by Defendant David Kubala in this case, Dkt. No. 33.

The Court HEREBY APPROVES the Stipulation and Settlement and its terms.

IT IS SO ORDERED.

DATED this 29<sup>th</sup> day of August, 2023.

  
\_\_\_\_\_  
HON. JAMES L. ROBART  
U.S. District Court Judge



**CERTIFICATE OF SERVICE**

I hereby certify that on August 28, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which sends notice of the filing to all ECF participants of record.

I hereby further certify that on August 28, 2023, I provided direct notice of the foregoing, via email to Jana Kubala and on August 28, 2023, I provided direct notice of the foregoing, via U.S. Postal Service Priority Mail, to Jana Kubala at her address of record.

s/Hannah G. Williams

HANNAH G. WILLIAMS

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